



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-40-10 et seq.
Regulation title	Regulations Governing the Practice of Respiratory Care
Action title	Periodic review recommendations
Document preparation date	4/7/06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed action is to clarify certain provisions of regulation for ease of compliance and consistency with current practices. The Board will consider rules for reactivation or reinstatement of inactive or lapsed licenses to provide requirements that will reasonably ensure competency for active practice. If a practitioner has been out of active practice completely for five or more years, the Board will consider a requirement for a re-certification examination.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

In addition, the Medical Practice Act requires the Board to establish requirements for the licensure of respiratory care practitioners:

§ 54.1-2954.1. Powers of Board concerning respiratory care.

The Board shall take such actions as may be necessary to ensure the competence and integrity of any person who claims to be a respiratory care practitioner or who holds himself out to the public as a respiratory care practitioner or who engages in the practice of respiratory care and to that end the Board shall license persons as respiratory care practitioners. The provisions hereof shall not prevent or prohibit other persons licensed pursuant to this chapter from continuing to practice respiratory care when such practice is in accordance with regulations promulgated by the Board.

The Board shall establish requirements for the supervised, structured education of respiratory care practitioners, including preclinical, didactic and laboratory, and clinical activities, and an examination to evaluate competency. All such training programs shall be approved by the Board.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The proposed change is to clarify the requirements for a person seeking reactivation from inactive status and for a person who has allowed his license to lapse. Currently, such a person has to indicate that he has actively practiced in another jurisdiction while his license was lapsed or inactive in Virginia or provide other evidence of competency, which may be problematic. The amended rule would specify that the alternative to indicate continued competency may be hours of continuing education in respiratory care. The Board is particularly concerned about persons who have been completely out of practice for five or more years because knowledge changes so rapidly in respiratory care that they may not be competent to resume active practice. To protect the health and safety of vulnerable patients who may need respiratory treatment, the Board intends to consider an additional measure of competency, such as a recertification examination.

As a result of its review of regulations on respiratory care, the Advisory Board also recommended other amendments to clarify requirements that have not been clearly understood or need to be updated to current practice.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The primary purpose of the action is to look at requirements that ensure continued competency, both for renewal of active licenses and for reactivation or reinstatement. In its review of requirements for licensure, the regulatory committee of respiratory care practitioners expressed concern that persons who had not maintained certification by the National Board for Respiratory Care. All practitioners are awarded a credential of CRT (Certified Respiratory Therapist) or RRT (Registered Respiratory Therapist) after passage of the NBRC examination required for licensure in Virginia. While many respiratory care practitioners maintain that credential with NBRC, it is not required to renew one's license. As the organization that sets and maintains standards for the practice of respiratory, membership in NBRC is a measure of one's individual professional commitment but it does not supersede the current measures for continued competency set in Board regulations. Continuing education is required for renewal of an NBRC credential, but it is also required for renewal of a respiratory license in Virginia. Since the committee could not identify a value to requiring maintenance of the NBRC in terms of public protection, it was not recommended.

The current interpretation of section 61, which sets the requirements for reactivation of an inactive license, has created a dilemma for several persons. The rule says that you must submit information on continued practice in another jurisdiction or other evidence of competency to return to active practice to include 10 hours of CE for each year of inactivity. The Board currently requires some evidence of competency in addition to the hours of CE; for someone who has not held an active license and has been out of practice, that "evidence of competency" is difficult, if not impossible, to produce. The Board recommends a clarification that states the "evidence of competency" (which could include shadowing a licensed RRT) is one option for reactivation *in addition to* practice in another jurisdiction or hours of continuing education.

Finally, the Board recommends some additional evidence of competency for those practitioners who have been inactive or lapsed (and not actively practicing in another jurisdiction) for more than five years. The NBRC offers a re-credentialing examination that many of its members take voluntarily as evidence of continued competency. That examination may provide the additional evidence that is necessary to ensure the public that practitioners returning to practice after a length period are safe to resume treating patients.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.